

Guidelines for Married Filing Separate Returns

References in this publication are to the California Revenue and Taxation Code (R&TC).

General

For federal income tax purposes, married taxpayers may file either as married filing joint or married filing separate.

Generally, it is to your advantage to file married filing joint, especially, if you are domiciled in a community property state such as California.

California requires that you use the same filing status on your California return that you used on your federal return. There are two exceptions to this requirement:

- if either spouse was an active member of the United States armed forces (or an auxiliary military branch) during the tax year, or
- if either spouse was a nonresident for the entire year and had no income from California sources during the tax year. (See FTB Pub. 1031.)

If you filed married filing separate for federal or meet one of the above exceptions, you may file married filing separate for California.

Changing Filing Status

If a valid joint return is filed, the filing status may not be changed to separate after the original due date of the return.

Exceptions:

- The marriage was annulled;
- The joint return was actually not valid, because the taxpayers were not married; or
- The executor or administrator of a decedent disaffirmed the joint return elected by the surviving spouse and filed a separate return for the decedent. The change must have been made within one year from the due date of the surviving spouse's return.

If separate returns are filed, an amended return changing the filing status to married filing joint may be filed so long as the filing status of the federal return is also married filing joint.

Exceptions: A joint return may not be filed:

- After either spouse has been issued a Notice of Proposed Assessment (PA) for the taxable year and the spouse filed a protest or appeal.
- After either spouse has filed a suit in any court for recovery of tax for the taxable year.
- After either spouse has entered into a closing agreement under R&TC 19441 for the taxable year.

Filing a Separate Return

If you do file married filing separate, you must follow the community property rules for the division of income and deductions.

You and your spouse must each report half of the community income, plus your separate income on your respective separate returns.

Community Property

Community property is all of the property acquired by a husband or wife or both while domiciled in a community property state that is not separate property, as defined below.

Each spouse owns one-half of all community property. If property cannot be specifically identified as separate property, it is considered community property.

Community Income

Income generated from community property is community income. Community income also includes compensation for services if the spouse earning the compensation is domiciled in a community property state.

Community income must be divided equally between you and your spouse when separate returns are filed.

Note: In California, community status, relative to earnings and accumulations of property, ends when the marital partners physically separate with no immediate intention of reconciliation. The income earned after the community status ends is separate income.

Separate Property

Separate property is:

- property owned separately by the husband or wife before marriage;
- property received separately as gifts or inheritances;
- property purchased with separate property funds;
- money earned while domiciled in a separate property state; and
- all property declared separate property in a valid agreement (pre- or post-nuptial agreement).

Separate property must be maintained separately. If the property or the income from the property is used for community purposes, or commingled, it could lose its separate property character, overriding any agreements.

Separate Income

Generally, income from separate property is income of the spouse who owns the property. When separate returns are filed, you and your spouse must each report your separate income on your separate return.

Deductions

Expenses incurred to earn or produce community business or investment income are generally divided equally between you and your spouse. Each of you is entitled to deduct half of the expenses of the business or investment expenses on your separate return.

Expenses incurred to earn or produce separate business or investment income are deductible by the spouse who owns the investment generating the income, provided that spouse pays the expenses from his or her separate funds.

Expenses that are not attributable to any specific income, such as medical expenses, are deductible by the spouse who pays them. If these expenses are paid from community funds, the deduction is divided equally between you and your spouse.

Note: If one spouse itemizes deductions, you both must itemize deductions.

Division of Income, Residents of California - Examples

Example 1 — In 1995 you and your spouse are residents of and domiciled in California. You earned \$15,000 in wages. Your spouse earned \$30,000. In addition to wages, you have stock that you inherited. The stock is in your name only, and you keep the stock and the dividend income separate from community funds. You received \$5,000 in dividends in 1995. You have decided to file separate returns.

Determination: You and your spouse each have \$22,500 in community income: $(\$15,000 + \$30,000 \div 2) = \$45,000 \div 2$. In addition to your \$22,500 in community income to be reported, you must include the \$5,000 of separate income from dividends, making your total income \$27,500.

Example 2 — In 1995, you and your spouse are residents of and domiciled in California. For the first six months of 1995 you earned \$30,000. Your spouse did not earn any income. On June 30, 1995, you and your spouse physically separated with no intention of reconciliation. During the last six months, you earned \$30,000 and your spouse earned \$10,000. You have decided to file separate returns.

Determination: For the first six months of the year, your earnings were community income. You and your spouse must each report on your individual returns one half of the income earned during this period. When you and your spouse physically separated with no intention of reconciliation, your community income status ended. Therefore, from July 1, 1995, through December 31, 1995, the income earned by you and your spouse was separate income on your individual returns.

	You	Your Spouse
Community Jan.–June	\$15,000	\$15,000
Separate July–Dec.	<u>30,000</u>	<u>10,000</u>
Total	<u>\$45,000</u>	<u>\$25,000</u>

Exemption Credits

When you file separate returns, you and your spouse must each claim your own personal exemption credit.

When you have more than one dependent supported by community funds, you and your spouse may divide the number of dependents between you in any manner you choose. However, you may not split the credit for any one dependent.

Withholding and Estimated Tax Credit

Taxpayers should file to claim credit for any estimated payments and withholding from the various income sources in the same manner as the income is reported.

If the income is:

- Community income, then one-half of the income and one-half of the withholding or estimate tax paid attributed to that one-half of the income, is reported on each spouse's separate tax return; or
- Separate income, then the income and the withholding or estimate tax paid attributed to the separate income is reported on the separate tax return of the spouse who earned the income and prepaid the tax.

For Additional Information

Regular Toll-Free Phone Service

Our regular toll-free telephone service is available from 7:00 a.m. until 8:00 p.m. Monday through Friday from January 2 through April 15. After April 15, service is available Monday through Friday, between 8:00 a.m. and 5:00 p.m.

From within the United

States, call 1-800-852-5711

From outside the United States

call (not toll-free) 1-916-845-6500

For Hearing Impaired

with TDD 1-800-822-6268

For federal tax questions, call
1-800-829-1040.

Bilingual Assistance

Para obtener servicio bilingüe de información sobre impuestos o formularios, llame al número de teléfono (anotado arriba) que le corresponde.

Hearing Impaired

Toll-free phone service is provided for the hearing impaired with a Telecommunications Device (TDD). Call 1-800-822-6268. The Franchise Tax Board will also accept calls for, and relay messages to, any California state agency.